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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

15 CR 73 (RMB)

5 EVGENY BURYAKOV,

6 Defendant.

7 -----x
8 New York, N.Y.
9 June 9, 2015
12:00 noon

10 Before:

11 HON. RICHARD M. BERMAN,

12 District Judge

13 APPEARANCES

14 PREET BHARARA

15 United States Attorney for the
Southern District of New York

16 ADAM FEE

17 IAN MCGINLEY

ANNA SKOTKO

Assistant United States Attorneys

18 WHITE & CASE

19 Attorneys for Defendant

20 EVGENY BURYAKOV

21 Also present: ANDREW TARUTZ, Russian language interpreter

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1 (In open court; case called)

2 THE COURT: Please be seated everybody.

3 So we should note for the record that we do have a
4 Russian language interpreter.

5 Are you interpreting?

6 THE INTERPRETER: Yes.

7 THE COURT: But you are here as stand-by is my
8 understanding?

9 THE DEFENDANT: Yes.

10 THE COURT: This is a status conference. I will just
11 note preliminarily -- and thank you, Mr. Hershman -- on June 2,
12 2015, Mr. Alexandra Slepnev agreed and accepted the retainer
13 agreement as I had asked and so that has been accomplished. I
14 believe this is already on the docket.

15 So the next up is really to hear from you all, where
16 we go from here and what time frame.

17 MR. HERHMAN: I am happy to start, your Honor.

18 THE COURT: Okay.

19 MR. HERHMAN: First, as I informed the government
20 yesterday, we intend to file a motion to dismiss the
21 indictment. We're prepared to do that imminently, tomorrow or
22 the latest on Thursday, and we would request that we set a
23 schedule for the government's response to the motion.

24 THE COURT: Okay.

25 MR. HERHMAN: In addition to that the only other

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1 things I had on my agenda I think are in hand at the moment.
2 One is some questions that I raised with Mr. Fee yesterday
3 effectively at a meet-and-confer on some particulars that we're
4 looking for. I am expecting a response from the government
5 today or tomorrow and that is fine if the response is complete
6 and the questions are answered; but if not, we would request
7 permission to make that motion. There are not very many of
8 them. I think we're talking about six or seven questions in
9 all. They are pointed to the indictment.

10 THE COURT: The way I would like to do it is that it
11 not be a separate motion so that you hold your motions to
12 dismiss until you see what the resolution is of this issue. If
13 it is resolved, fine. If not, you include it with the motion
14 to dismiss so we have just one motion to dismiss per case as it
15 were.

16 MR. HERHMAN: I think that would work including the
17 timing because I think we're expecting a response from the
18 government tonight.

19 THE COURT: On the particulars issue?

20 MR. HERHMAN: Yes. We should still be able to file
21 tomorrow or Thursday.

22 THE COURT: Yes.

23 MR. HERHMAN: Just an update on some minor
24 housekeeping issues discovery-wise. Mr. Buryakov still does
25 not have access to a large volume of video discovery. I know

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1 that the government is working on that. They have told me so.
2 I wanted to point out to the Court that although he now has the
3 extra library time which, thank you, it has been arranged with
4 BOP, we are are still not getting access to those tapes over
5 there. I have them and I am able to review them but not
6 Mr. Buryakov.

7 THE COURT: That's not a clearance issue. That's just
8 a mechanical issue?

9 MR. HERHMAN: Yes. That's my understanding.

10 THE COURT: Mr. Fee.

11 MR. FEE: Your Honor, taking the last issue first. I
12 can report progress. We now have those hard drives. There are
13 five of them ready to be provided to the facility so that Mr.
14 Buryakov can access them in the law library. It is such a
15 large amount of data that it took quite a bit of time to
16 reproduce. We have also had previously provided to him a
17 letter that was sent to the defense outlining the particular
18 instances based on our review so far within that large amount
19 of video surveillance footage that are most relevant to this
20 case.

21 THE COURT: Calling to their attention that aspect of
22 the bulk so to speak data video that pertained particularly in
23 your opinion to Mr. Buryakov?

24 MR. FEE: Correct, your Honor, just to ease the
25 prospect of reviewing all those hours of videotapes. It

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1 highlights the most relevant portions.

2 THE COURT: Got it.

3 MR. FEE: With respect to the motions, your Honor, or
4 anticipated motions of Mr. Hershman's summaries, I actually
5 reached out yesterday afternoon. The government will respond.
6 There are not that many questions. Whether or not that renders
7 unnecessary the filing of a motion for a bill of particulars,
8 obviously I will leave that to Mr. Hershman, but we will
9 respond this evening.

10 With respect to the combined defense motion, we would
11 ask if it is agreeable with the Court for three weeks to
12 respond anticipating a motion to dismiss as well as perhaps
13 discovery related to the motion.

14 THE COURT: Let's say he files Thursday, which is
15 probably realistic, so is that July 2nd that you would respond
16 by?

17 MR. FEE: That sounds, correct, your Honor.

18 THE COURT: I am sure this is what you meant,
19 Mr. Hershman, but just to make clear there will not be another
20 motion to dismiss apart from this one, which is what I do in
21 criminal and civil cases?

22 MR. HERHMAN: My expectation, your Honor, is that this
23 motion will be dispositive of the case.

24 THE COURT: I just want you to know my expectation is
25 that there will not be another one. My point, although I am

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1 not really stating it well, is if you anticipate that there is
2 some area of inquiry based on what they delivered to you, you
3 may want to wait; you know what I mean? If something gets in
4 the video or in response to your questions, etc., I would hold
5 it until you got the universe which is your target for your
6 motion to dismiss.

7 MR. HERHMAN: I understand.

8 THE COURT: You got that.

9 MR. HERHMAN: Yes.

10 THE COURT: July 2 would be the government's response.

11 Mr. Hershman, when do you want to reply assuming
12 July 2 is the response, the opposition date?

13 MR. HERHMAN: July 14, your Honor, which I think is a
14 Tuesday.

15 THE COURT: It is. That's fine. Can we do this on
16 submission or do you want to have oral argument?

17 MR. HERHMAN: I think we may want to have oral
18 argument, your Honor, if you don't mind.

19 THE COURT: I don't. It is usually pretty brief. If
20 anybody asks for it, it is fine.

21 MR. HERHMAN: It can be brief. The issue will be
22 clear.

23 One other thing relating to the motion, which I don't
24 think is going to be an issue for the Court that I spoke with
25 the government about and that concerns some documents that will

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1 be filed with the motion that contain personal information
2 pertaining to Mr. Buryakov. That information was obtained from
3 the search warrant documents that the government produced to
4 us. So I believe it is subject to the protective order and all
5 cases would be filed under seal. I just want to ensure that
6 part of the motion is under seal.

7 THE COURT: I don't know exactly what the category is,
8 not without getting into specifics.

9 MR. HERHMAN: It is the visa application that was made
10 on behalf of the DBE for Mr. Buryakov, which contains a lot of
11 personal data relating to him.

12 THE COURT: Like addresses?

13 MR. HERHMAN: Date of birth.

14 THE COURT: You can't black that out?

15 MR. HERHMAN: It's kind of all over the place. I
16 think the document pursuant to the protective order needs to be
17 under seal if I am not mistaken.

18 THE COURT: I don't know if we did in this case, but
19 we usually add a rider at the end which says it doesn't really
20 bind the Court in a particular instance. That is to say, the
21 protective order is usually between the two of you. It is
22 academic. We'll deal with it when we see it. File it the way
23 you want to file it. If I have a problem with it, I will call
24 it to your attention.

25 MR. HERHMAN: Very good.

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1 THE COURT: Let's hold July 23, 2015 at 11:00 for oral
2 argument. Are there other issues that you want to discuss?

3 MR. HERHMAN: None from me, your Honor.

4 MR. FEE: Just very briefly, your Honor, to keep it on
5 the Court's radar. There is obviously going to be classified
6 discovery in this case once Mr. Hershman and his team have
7 received clearance. My understanding is that there has been
8 some progress on that. Those clearances have not yet come
9 through, but it is likely to happen relatively soon. I think
10 in a number of weeks. If it suits the Court, I would propose
11 that counsel confer about a proposed SIPA briefing schedule.
12 There may not be SIPA briefing in this case, but we can
13 certainly propose one when it appears that the clearances are
14 forthcoming just so that we have a schedule before the Court
15 and make a joint submission if it obviously works for
16 Mr. Hershman and the Court.

17 THE COURT: Sure.

18 Anything else from the defense?

19 MR. HERHMAN: No, your Honor, nothing else.

20 THE COURT: What about speedy trial, is there an issue
21 or application?

22 MR. FEE: Yes, your Honor. We would ask that the
23 Court exclude time through July 23rd, the oral argument date,
24 in the interest of justice so that Mr. Hershman and his team
25 can continue to review discovery, prepare and file motions,

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1 understanding that this exclusion may be academic in part upon
2 the filing of the motion, but we ask to exclude it through the
3 next appearance date.

4 THE COURT: I am going to grant that application
5 finding under 18, United States Code, Section 3161 that the
6 request for adjournment joined in by both sides to and
7 including July 23, 2015 is appropriate and warrants exclusion
8 of the adjourned time from speedy trial calculations. I
9 further find that the exclusion is designed to prevent any
10 possible miscarriage of justice, to facilitate these
11 proceedings including any pending motion practice and to
12 guarantee effective representation of and preparation by
13 counsel by both sides. Thus, the need for exclusion and the
14 ends of justice outweigh the interest of the public and the
15 defendant in a speedy trial pursuant to 18, U.S.C., Section
16 3161(h)(7)(A) and (B).

17 Good to see you all. I will see you again July 23 at
18 11:00.

19 MR. FEE: Thank you, your Honor.

20 THE COURT: Thank you very much.

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